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CALIFORNIA LEGISLATURE—2009–10 EIGHTH EXTRAORDINARY SESSION

SENATE BILL

No. 26

**Introduced by Senators Pavley, Cedillo, Hancock, Padilla, Steinberg,
and Wolk**

(Principal coauthor: Assembly Member Skinner)

(Coauthor: Senator Alquist)

(Coauthor: Assembly Member Huffman)

February 4, 2010

An act to amend Section 26011 of, and to add Division 16.2 (commencing with Section 26100) to, the Public Resources Code, relating to energy, ~~and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 26, as amended, Pavley. Energy: California Alternative Energy and Advanced Transportation Financing Authority: Property Assessed Clean Energy (PACE).

(1) The California Alternative Energy and Advanced Transportation Financing Authority Act establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the authority to issue revenue bonds to provide industry with an alternative method of financing in providing and promoting the establishment of facilities utilizing alternative methods and sources of energy and

facilities needed for the development and commercialization of advanced transportation technologies.

Existing law authorizes a public agency and a property owner to enter into voluntary contractual assessments to finance the installation of distributed generation of renewable energy sources or energy or water efficiency improvements that are permanently affixed on real property.

This bill would require the authority to establish a Property Assessed Clean Energy (PACE) Reserve program to assist local jurisdictions in financing the installation of distributed generation of renewable energy sources or energy or water efficiency improvements that are permanently affixed on real property through the use of a voluntary contractual assessment. ~~The bill would establish the PACE Reserve Account within the California Alternative Energy Authority Fund and would transfer, until January 1, 2015, appropriate up to \$50,000,000 from the Renewable Resource Trust Fund into the account. The moneys in the account would be continuously appropriated to the authority for the purposes of the PACE Reserve program, thereby making an appropriation. The bill would require unencumbered funds in the account, on or after January 1, 2015, to revert back to the Renewable Resource Trust Fund.~~ The bill would require the authority, on March 31, 2011, and annually thereafter, to submit to the Legislature, a report containing specified information regarding the implementation of the above provisions.

(2) Existing law vests the authority with specified powers in the implementation of the California Alternative Energy and Advanced Transportation Financing Authority Act.

This bill would authorize the authority to purchase bonds issued by a public agency meeting specified criteria. The bill would authorize the authority to hold the purchased bonds or to sell the purchased bonds, in whole or in part, to public or private purchasers.

(3) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

(4) *This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 26011 of the Public Resources Code is
2 amended to read:
3 26011. The authority is authorized and empowered:
4 (a) To adopt an official seal.
5 (b) To sue and be sued in its own name.
6 (c) To issue bonds, notes, bond anticipation notes, and other
7 obligations of the authority, including, at the option of the
8 authority, obligations bearing interest that is taxable for purposes
9 of federal income taxation, for any of its purposes and to fund or
10 refund the same, all as provided in this division.
11 (d) To determine the location and character of a project to be
12 financed under the provisions of this division, to lend financial
13 assistance to a participating party, to enter into loan agreements
14 with a participating party for the financing of a project including
15 creating a lien or security interest in the property, to construct,
16 reconstruct, renovate, replace, lease, as lessor or lessee, and
17 regulate the same, and to enter into contracts for the sale of a
18 project, including installment sales or sales under conditional sales
19 contracts.
20 (e) To fix fees and charges for projects, and interest rates with
21 respect to loans for projects, and to revise from time to time the
22 fees and charges and interest rates, and to collect rates, rents, fees,
23 and charges for the use of, and for a facility or service furnished,
24 or to be furnished, by a project or part of the project and to contract
25 with a person, partnership, association, corporation, or public
26 agency with respect to the project, and to fix the terms and
27 conditions upon which a project may be sold or disposed of,
28 whether upon installment sales contracts or otherwise.
29 (f) To employ and fix the compensation of bond counsel,
30 financial consultants, and advisers as may be necessary in its
31 judgment in connection with the issuance and sale of any bonds,
32 notes, bond anticipation notes, or other obligations of the authority;
33 to contract for engineering, architectural, accounting, or other
34 services of appropriate state agencies as may be necessary in the
35 judgment of the authority for the successful development of a

1 project; and to pay the reasonable costs of consulting engineers,
2 architects, accountants, and construction experts employed by a
3 participating party if, in the judgment of the authority, the services
4 are necessary to the successful development of a project, and the
5 services are not obtainable from a state agency.

6 (g) To purchase alternative source energy or projects from a
7 person or entity for sale to a participating party, or to make a loan
8 to a participating party to purchase alternative source energy or
9 projects, or to purchase from a person or entity that has contracted
10 to sell alternative source energy to a participating party the right
11 to receive purchase payments and related rights under that contract
12 or any related contracts. Notwithstanding any other applicable law,
13 the authority and a public agency, for purposes of a program or
14 financing, shall have the power to enter into contractual
15 arrangements and related agreements or instruments, including,
16 without limitation, a prepayment purchase contract, lease, loan,
17 construction, security, operation and maintenance, or other
18 agreement or instrument, with the authority or with a participating
19 party, upon the terms and subject to the conditions that may be
20 necessary or convenient to accomplish the purposes of this
21 subdivision. The authority shall only enter into a prepayment
22 contract with a participating party for energy derived from an
23 alternative source to the extent the prepayment is for energy
24 intended to primarily offset part or all of the authority's or a
25 participating party's own electrical requirements.

26 (h) To purchase, with proceeds of its bonds or its revenue, bonds
27 issued by a public agency described in paragraph (2) of subdivision
28 (f) of Section 26003 at a public or negotiated sale. Bonds purchased
29 pursuant to this subdivision may be held by the authority or sold
30 to public or private purchasers at public or negotiated sales, in
31 whole or in part, separately or together with other bonds issued by
32 the authority.

33 (i) To do all things generally necessary or convenient to carry
34 out the purposes of this division.

35 SEC. 2. Division 16.2 (commencing with Section 26100) is
36 added to the Public Resources Code, to read:

DIVISION 16.2. PROPERTY ASSESSED CLEAN ENERGY
(PACE) FINANCING ASSISTANCE

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

26100. (a) The Legislature finds and declares all of the following:

(1) Property Assessed Clean Energy (PACE) financing has been pioneered by municipalities and counties in California as a way for home and small business owners to finance voluntary energy and water efficiency and clean energy improvements.

(2) PACE financing was pioneered in the City of Berkeley, while the City and County of San Francisco, City of San Diego, City of Palm Desert, Sonoma County, and the California Statewide Communities Development Authorities (CSCDA) have already initiated or are working to launch additional programs.

(3) Seventeen other states, including Colorado and New York, have also enacted enabling PACE legislation.

(4) PACE programs create new jobs, lower energy demand, and help spur new clean industries that will help grow the economy.

(b) It is the intent of the Legislature to assist local jurisdictions in financing the installation of distributed generation of renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property through the use of voluntary contractual assessments.

(c) It is not the intent of the Legislature to create any debt, liability, or obligation on the part of the state in assisting local jurisdictions pursuant to this division.

26101. Unless the context otherwise requires, the definitions in this chapter govern the construction of this division.

~~26102. “Account” means the PACE Reserve Account established pursuant to Section 26140.~~

26103. “Applicant” means a public agency as defined in paragraph (3) of subdivision (c) of Section 5898.20 of the Streets and Highways Code.

26104. “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004.

26105. “Property Assessed Clean Energy bond” or “PACE bond” means a bond that is secured by a voluntary contractual

1 assessment on property authorized pursuant to paragraph (2) of
2 subdivision (a) of Section 5898.20 of the Streets and Highways
3 Code or by a voluntary contractual assessment or a voluntary
4 special tax pursuant to ~~Chapter 2.5 (commencing with Section~~
5 ~~53311) of Part 1 of Division 2 of Title 5 of the Government Code~~
6 on property to finance the installation of *distributed generation*
7 renewable energy sources, or energy or water efficiency
8 improvements that is levied pursuant to a chartered city's
9 constitutional authority under Section 5 of Article XI of the
10 California Constitution.

11 26106. "PACE program" means a program established by an
12 applicant that is financed by the PACE bond.

13 26107. This division does not create any liability or obligation
14 upon the State of California and none shall be incurred by the
15 authority beyond the extent to which moneys shall have been
16 provided under this division. The authority shall not create any
17 debt, liability, or obligation on the part of the State of California
18 payable from any source whatsoever other than the moneys
19 provided under this division.

20 21 CHAPTER 2. PACE RESERVE PROGRAM

22
23 26120. The authority shall develop and administer a PACE
24 Reserve program to reduce overall costs to the property owners
25 of PACE bonds issued by an applicant by providing a reserve of
26 no more than 10 percent of the initial principal amount of the PACE
27 bond.

28 26121. To qualify for assistance pursuant to this division, the
29 PACE program shall require all of the following:

30 (a) The interest rate on the PACE bond does not exceed a
31 percentage as determined by the authority to be appropriate.

32 (b) Minimum legal loan structure and credit underwriting criteria
33 as determined by the authority are met.

34 (c) Proceeds of the PACE bonds are used to finance qualified
35 energy and water efficiency and clean energy improvements.

36 (d) (1) An improvement financed by the proceeds of a PACE
37 bond *that receives assistance wholly or in part from the Renewable*
38 *Resource Trust Fund pursuant to this division* shall be considered
39 public work for purposes of Chapter 1 (commencing with Section
40 1720) of Part 7 of Division 2 of the Labor Code.

(2) Paragraph (1) does not apply to an improvement that would not otherwise be considered public work if the improvement is on a residential project of three units or fewer, or if the improvement costs less than twenty-five thousand dollars (\$25,000) in total.

26122. An applicant shall submit to the authority an application providing a detailed description of the PACE program, a detailed description of the transactional activities associated with the PACE bond issuance, including all transactional costs, and other information deemed necessary by the authority.

26123. (a) In evaluating eligibility, the authority shall consider whether the applicant's PACE program includes the following conditions:

(1) Loan recipients are legal owners of underlying property.

(2) Loan recipients are current on mortgage and property tax payments.

(3) Loan recipients are not in default or in bankruptcy proceedings.

(4) Loans are for less than 10 percent of the value of the property.

(5) The property is within the geographical boundaries of the PACE program.

(6) The program offers financing for energy efficiency improvements.

(7) Improvements financed by the program follow applicable standards of energy efficiency retrofit work, including any guidelines adopted by the State Resources Conservation and Development Commission.

(b) In evaluating an application, the authority shall consider all of the following factors:

(1) The use by the PACE program of best practices, adopted by the authority, to qualify eligible properties for participation in underwriting the PACE program.

(2) The cost efficiency of the applicant's PACE program, including bond issuance.

(3) The projected number of jobs created by the PACE program.

(4) The applicant's PACE program requirements for quality assurance and consumer protection as related to achieving efficiency and clean energy production.

(5) The mechanisms by which savings produced by this program are passed on to the property owners.

(6) Any other factors deemed appropriate by the authority.

26124. The authority shall review the applicant's PACE bond issuance, including, but not limited to, indenture, trust agreement, and fiscal agent agreement ("the bond documents") and, when the authority is satisfied that the bond documents are consistent with the requirements of the PACE Reserve program established pursuant to this chapter, the authority shall advance to the applicant or the applicant's bond trustee ~~from the account~~, at the closing of the applicant's PACE bonds, the amount *made available from the Renewable Resource Trust Fund* and approved by the authority for use in the PACE bond's reserve fund under the bond documents. Prior to the disbursement of moneys pursuant to this section into a reserve fund, the authority shall enter into an agreement with the applicant regarding the creation and operation of the reserve fund, including the manner in which the authority will be repaid for any moneys disbursed to the reserve fund.

CHAPTER 3. ~~PACE RESERVE ACCOUNT AND REPORTING~~

~~26140. (a) There is in the California Alternative Energy Authority Fund the PACE Reserve Account. Notwithstanding Section 13340 of the Government Code, the moneys in the account shall be continuously appropriated to the authority solely for the purposes of this division.~~

~~(b) Fifty million dollars (\$50,000,000) from the Renewable Resource Trust Fund is hereby transferred to the account.~~

~~(c) To the extent amounts in the account are not required for current obligations or expenditure, those amounts shall be invested in interest-bearing obligations, and the interest earned shall become part of the account.~~

~~(d) Any amount appropriated from the account for purposes other than those specified in this division shall be repaid to the account within one year from that appropriation.~~

~~(e) On and after January 1, 2015, any unencumbered amounts in the account shall revert to the Renewable Resource Trust Fund, or its successor.~~

26140. (a) *Until January 1, 2015, an amount of up to fifty million dollars (\$50,000,000) from the Renewable Resource Trust Fund, established pursuant to Section 25751, is hereby appropriated to the authority for the purposes of this division. The*

1 *moneys appropriated shall remain in the Renewable Resource*
2 *Trust Fund until the funds are needed by the authority pursuant*
3 *to this division.*

4 *(b) Of the moneys appropriated in subdivision (a), up to three*
5 *hundred thousand dollars (\$300,000) may be expended by the*
6 *authority for the initial administrative costs in implementing this*
7 *division.*

8 *(c) All repayments of moneys disbursed pursuant to this division*
9 *shall be deposited into the Renewable Resource Trust Fund.*

10 26141. On March 31, 2011, and annually thereafter, the
11 authority shall submit to the Legislature a report on all of the
12 following:

13 (a) The status of the account.

14 (b) A summary of the PACE bonds that received assistance
15 pursuant to this division.

16 (c) A summary of the benefits provided by this division,
17 including reduced interest rates on the PACE bonds receiving
18 assistance pursuant to this division.

19 (d) The number of jobs created by the PACE programs that
20 received assistance pursuant to this division.

21 (e) Information on energy and water savings resulting from the
22 PACE programs that received assistance pursuant to this division.

23 (f) Other information deemed appropriate by the authority.

24 SEC. 3. This act addresses the fiscal emergency declared by
25 the Governor by proclamation on January 8, 2010, pursuant to
26 subdivision (f) of Section 10 of Article IV of the California
27 Constitution.

28 SEC. 4. *This act is an urgency statute necessary for the*
29 *immediate preservation of the public peace, health, or safety within*
30 *the meaning of Article IV of the Constitution and shall go into*
31 *immediate effect. The facts constituting the necessity are:*

32 *To expedite the issuance of the Property Assessed Clean Energy*
33 *bonds by local entities that would facilitate the installation of*
34 *energy and water efficiency improvements and distributed*
35 *generation renewable energy sources on real property, creating*
36 *jobs in the green energy sector and protecting the environment, it*
37 *is necessary for this act to take effect immediately.*

O